

Office of Petitions: Routing Sheet



Application No. 12/084,134

This application is being forwarded to your office for further processing. A decision has been rendered on a petition filed in this application.

GRANTED

DISMISSED

DENIED



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
12/084,134	08/27/2009	Bruno Melis	09952.0468-00000	5280

22852 7590 10/30/2014
FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER
LLP
901 NEW YORK AVENUE, NW
WASHINGTON, DC 20001-4413

EXAMINER

LE, NHAN T

ART UNIT	PAPER NUMBER
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2649

MAIL DATE	DELIVERY MODE
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10/30/2014

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.



UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
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In re Patent No. 8,437,712 : DECISION ON REQUEST FOR
Melis et al. : RECONSIDERATION OF
Issue Date: May 7, 2013 : PATENT TERM ADJUSTMENT
Application No. 12/084,134 : and
Filed: August 27, 2009 : NOTICE OF INTENT TO ISSUE
Atty Docket No.: 09952.0468-00000 : CERTIFICATE OF CORRECTION

This is a decision on the petition filed on October 4, 2013 pursuant to 37 C.F.R. § 1.705(b) requesting that the patent term adjustment indicated on the above-identified patent be corrected to indicate that the term of the above-identified patent is extended or adjusted by one thousand, four hundred and nine (1409) days.

The petition to correct the patent term adjustment indicated on the above-identified patent to indicate that the term of the above-identified patent is extended or adjusted by one thousand, four hundred and nine (1409) days is **GRANTED**.

The Office acknowledges submission of the \$200.00 fee set forth in 37 CFR 1.18(e), along with a three-month extension of time so as to make timely this petition. No additional fees are required. Patentee has indicated this patent is not subject to a terminal disclaimer on the third page of this petition.

It is noted in passing the Office agrees the commencement date is April 28, 2008. Patentee sets forth the commencement date as April 28, 2008 on page 2, paragraph B of the petition, but uses a commencement date of April 27, 2008 to calculate the over three-year period. It follows the Office finds the over three-year period which begins on April 29, 2011 (not April 27, 2011) and ends with the issuance of the patent on May 7, 2013 totals 740, not 741 days, and the period of overlap which begins on April 28, 2011 not (April 27, 2011) totals 490, not 491 days. See petition, page 3, paragraphs C and E.

Formula:

“A” delay + “B” delay + “C” delay - overlap - applicant delay = X.

USPTO’s Calculation:

1159 + 740 + 0 - 490 - 0 = 1409

Art Unit: OPET

Patentee's Calculation:

$$1159 + 741 + 0 - 491 - 0 = 1409$$

The application is being forwarded to the Certificates of Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by **one thousand, four hundred and nine (1409) days**.

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3225.

/Paul Shanoski/

Paul Shanoski
Attorney Advisor
Office of Petitions

Encl: Adjusted PTA calculation
DRAFT Certificate of Correction

Art Unit: OPET

UNITED STATES PATENT AND TRADEMARK OFFICE
CERTIFICATE OF CORRECTION

PATENT : 8,437,712 B2

DATED : **May 7, 2013**

DRAFT

INVENTOR(S): **Melis et al.**

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

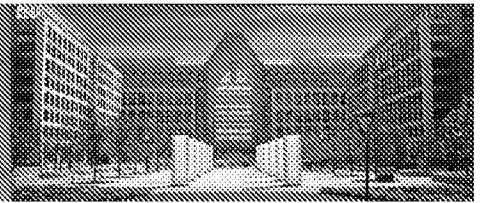
On the cover page,

[*] Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 USC 154(b) by 923 days

Delete the phrase "by 923 days" and insert – by 1409 days --



Patent Term Adjustments



PTA/PTE Information **Patent Term Adjustment** Patent Term Extension

Application Number*: 12084134 Search [Explanation of PTA Calculation](#) [Explanation of PTE Calculation](#)

PTA Calculations for Application: 12084134

Application Filing Date: 08/27/2009	OverLapping Days Between (A and B) or (A and C): 490
Issue Date of Patent: 05/07/2013	Non-Overlapping USPTO Delays: 923
A Delays: 673	PTO Manual Adjustment: 486
B Delays: 740	Applicant Delay (APPL): 0
C Delays: 0	Total PTA (days): 1409

* - Sorted Column

File Contents History

Action Number	Action Recorded Date	Action Due Date	Action Code	Action Description	Duration PTO	Duration APPL	Parent Action Number
64	10/21/2014		P028	Adjustment of PTA Calculation by PTO	1152		0
64	10/21/2014		P028	Adjustment of PTA Calculation by PTO	1152		0
63	10/21/2014		P028	Adjustment of PTA Calculation by PTO		872	0
63	10/21/2014		P028	Adjustment of PTA Calculation by PTO		872	0
59.5	05/07/2013	04/28/2011	PTA36M	PTA 36 Months	248		59.4
59	05/07/2013		PTAC	Patent Issue Date Used in PTA Calculation			0
58	04/09/2013		EFDC	Export to Final Data Capture			0
57	04/08/2013		D1935	Dispatch to FDC			0
56	04/08/2013		PILS	Application Is Considered Ready for Issue			0
55	04/05/2013		N084	Issue Fee Payment Verified			0
54	04/05/2013		IFEE	Issue Fee Payment Received			0
53	02/22/2013		FIDC	Finished Initial Data Capture			0
52	01/09/2013		EIDC	Export to Initial Data Capture			0
51	01/08/2013		MN/=-	Mail Notice of Allowance			0
50	01/07/2013		OAR	Office Action Review			0
49	01/07/2013		OAR	Office Action Review			0
48	01/07/2013		IREV	Issue Revision Completed			0
47	01/07/2013		DVER	Document Verification			0
46	01/07/2013		N/=-	Notice of Allowance Data Verification Completed			0
45	01/07/2013		DOCK	Case Docketed to Examiner in GAU			0
44	01/03/2013		EX.R	Reasons for Allowance			0
43	01/03/2013		CNTA	Allowability Notice			0
40	12/07/2012		INHY	case Inherited			0
39	12/07/2012		DOCK	Case Docketed to Examiner in GAU			0
36	12/06/2012		FWDX	Date Forwarded to Examiner			0
34	12/03/2012		INHY	case Inherited			0
33	12/03/2012		DOCK	Case Docketed to Examiner in GAU			0
41	11/30/2012		IDSC	Information Disclosure Statement considered			0
38	11/30/2012		RCAP	Reference capture on IDS			0
37	11/30/2012	11/30/2012	M844	Information Disclosure Statement (IDS) Filed			35
35	11/30/2012		A...	Response after Non-Final Action			0
32	11/30/2012		WIDS	Information Disclosure Statement (IDS) Filed			0
31	08/30/2012	10/27/2010	MCTNF	Mail Non-Final Rejection	872		13
30	08/28/2012		OAR	Office Action Review			0
28	08/16/2012		CTNF	Non-Final Rejection			0
21	01/05/2011		DOCK	Case Docketed to Examiner in GAU			0
20	08/04/2010		DOCK	Case Docketed to Examiner in GAU			0
17	04/25/2010		RCAP	Reference capture on IDS			0
15	01/28/2010		PG-ISSUE	PG-Pub Issue Notification			0
14	10/28/2009		OIPE	Application Dispatched from OIPE			0
12	10/19/2009		PGPC	Sent to Classification Contractor			0
11	10/19/2009		M903	Notice of DO/EO Acceptance Mailed			0
10	10/19/2009		FLRCPT.O	Filing Receipt			0
27	08/27/2009		IDSC	Information Disclosure Statement considered			0
19	08/27/2009		M844	Information Disclosure Statement (IDS) Filed			0
13	08/27/2009		371COMP	371 Completion Date			0
9	08/27/2009		ADDFL FEE	Additional Application Filing Fees			0
8	08/27/2009		INFODSCL	Information Disclosure Statements			0
7	08/27/2009		OATHDECL	A statement by one or more inventors satisfying the requirement under 35 USC 115, Oath of the Applicant			0
6	08/27/2009		WIDS	Information Disclosure Statement (IDS) Filed			0
59.4	04/28/2008		COMMN	Commencement Date			0
0.5	10/27/2005		NEFILE	International Filing date			0

Export to: [Excel](#)

Office of Petitions: Decision Count Sheet

Mailing Month

Application No.

12084134



For US serial numbers: enter number only, no slashes or commas. Ex: 10123456

For PCT: enter "51+single digit of year of filing+last 5 numbers", Ex. for PCT/US05/12345, enter 51512345

Deciding Official:

Paul Shanoski

Count (1) - Palm Credit

12/084,134

Decision:

GRANT

FINANCE WORK NEEDED

Select Check Box for YES



Decision Type:

551 - 37 CFR 1.705(d) - PATENT TERM ADJUSTMENT AI



Notes:

Count (2)

Decision:

n/a

FINANCE WORK NEEDED

Select Check Box for YES

Decision Type:

NONE

Notes:

Count (3)

Decision:

n/a

FINANCE WORK NEEDED

Select Check Box for YES

Decision Type:

NONE

Notes:

Initials of Approving Official (if required)

If more than 3 decisions, attach 2nd count sheet & mark this box

Printed on: 10/29/2014

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:)
Bruno MELIS et al.) Group Art Unit: 2649
Patent No. 8,437,712 B2) Examiner: Le, Nhan T.
Issued: May 7, 2013) Confirmation No.: 5280
Application No.: 12/084,134)
Filed: August 27, 2009) VIA EFS-WEB

For: METHOD AND SYSTEM FOR
MULTIPLE ANTENNA
COMMUNICATIONS USING
MULTIPLE TRANSMISSION
MODES, RELATED APPARATUS
AND COMPUTER PROGRAM
PRODUCT

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Commissioner:

APPLICATION FOR PATENT TERM ADJUSTMENT-POST GRANT

In accordance with 37 C.F.R. § 1.705, Applicant hereby applies for patent term adjustment under 35 U.S.C. § 154(b) of an additional 486 days or 1409 days total. This application for patent term adjustment (PTA) is being filed within the three month extended time limit from the May 7, 2013, issue date of the above-identified patent, as required by 37 C.F.R. § 1.705(b), and is accompanied by a three month petition for extension of time and the appropriate fee therefor.

I. STATEMENT OF THE FACTS INVOLVED

A. Correct Patent Term Adjustment

According to information printed on the face of the above-identified issued patent, U.S. Patent No. 8,437,712 B2 is entitled to 923 days of patent term adjustment, which corresponds to the PTA associated with this patent on PAIR. The Patentee, however, has calculated a patent term adjustment of 1409 days based on the following facts.

B. A Delays (Examination Delays)

The national stage requirements were fulfilled in the above-identified application on August 27, 2009, and the national stage commenced under 35 U.S.C. § 371 on April 28, 2008, thirty months after October 27, 2005, when the earliest priority application was filed.

A Non-Final Office Action was mailed on August 30, 2012, resulting in a U.S. Patent and Trademark Office (PTO) A delay of 673 days measured from the date of fulfilling the national stage requirements according to the PTO.

The AIA amended Section 154(b)(1)(A)(i) to start the 14-month period on the day after "the date of commencement of the national stage under section 371 in an international application," instead of on the § 371 Completion Date.

35 U.S.C. § 154(b)(1)(A)(i). Thus, the correct calculation of the PTO's A delay is 1159 days, counted from June 28, 2009 (14 months from the day after the date of commencement of the national stage) to August 30, 2012 (the mailing date of the Non-Final Office Action), instead of the Office's calculation of 673 days, counted from October 27, 2010 (14 months after the "371 Completion Date") to August 30, 2012 (the mailing date of the Non-Final Office Action).

Applicants agree with the Office calculation that there were no Applicant delays.

Based on the facts set forth above, the PTO delay during examination (A delays) is 1159 days, and Applicants' delay during examination is 0 days.

C. B Delays (Three-Year Pendency)

The Patentee and the Office disagree that PTA based on B delay is 740 days. The Patentee believes that the B delays should be 741 days (the period from the day after the date that is three years after the date of commencement of the national stage under section 371 (April 27, 2011) until the date the patent issued (May 7, 2013)). See 37 C.F.R. §§ 1.703(b).

D. C Delays

There was no C delay under the circumstances of this patent.

E. Overlapping PTO Days

There are 491 days overlapping days between "A" delays and "B" delays (the period from April 27, 2011 to August 30, 2012). In accordance with 37 C.F.R. § 1.703(f), and *Wyeth v. Kappos*, 591 F.3d 1364 (Fed. Cir. 2010), actual overlapping days may not be counted twice. Accordingly, the overlapping period of 491 days is subtracted from PTA otherwise accumulated under A and B delays.

F. Terminal Disclaimer

The above-identified application is not subject to a Terminal Disclaimer.

G. Reasonable Efforts

There were no circumstances constituting a failure to engage in reasonable efforts to conclude processing of examination of the above-identified application, as set forth in 37 C.F.R. § 1.704, other than those discussed above.

II. PTA DETERMINATION

According to information printed on the face of the above-identified issued patent, this patent is entitled to 923 days of patent term adjustment: 673 days of A delay + 740 days of B Delay - 490 days of overlap - 0 days of Applicant delay. The Patentee disagrees to the extent that A delay should be 1159 days so that overall PTA should be 1409 days: 1159 days of A delay + 741 days of B delay – 491 days of overlap - 0 days of Applicant delay. In view of the foregoing, the Patentee respectfully requests that the current patent term adjustment be reconsidered and adjusted in view of the above remarks.

III. FEE

As required by 37 C.F.R. § 1.705(b)(1), the required \$200.00 fee is being charged to our credit card. Please charge any deficiencies to Deposit Account No. 06-0916. If there are any other fees due in connection with the filing of this request, please charge them to Deposit Account No. 06-0916. If a fee is required for an extension of time under 37 C.F.R. 1.136 not accounted for above, such an extension is requested and the fee should also be charged to our deposit account.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.

Dated: **OCT 04 2013**

By: 

Ernest F. Chapman
Reg. No. 25,961

DO/EO WORKSHEET

Patent Application Specialist/ National Stage Division

U.S. Appl. No. 18/084,134

International Appl. No. PCT/EP2005/011529

WIPO PUBLICATION INFORMATION :

Publication No.: WO2007/048427 Publication Language : English (LA used as specification) German Japanese
 Chinese Korean French Spanish Russian Other : _____
 Publication Date : 3 MAY 2007 Not Published : U.S. only Early Pub. Request Published : Early Pub.

INTERNATIONAL APPLICATION PAPERS IN THE APPLICATION FILE :

- | | |
|---|--|
| <input checked="" type="checkbox"/> International Application (<i>RECORD COPY</i>)
<input type="checkbox"/> Article 19 Amendments
<input type="checkbox"/> PCT/IPEA/409 - IPER (check Examination Authority):
<input type="checkbox"/> EP <input type="checkbox"/> JP <input type="checkbox"/> SE <input type="checkbox"/> AU <input type="checkbox"/> US <input type="checkbox"/> FR <input type="checkbox"/> CN <input type="checkbox"/> ES
<input type="checkbox"/> RU <input type="checkbox"/> AT <input type="checkbox"/> CA <input type="checkbox"/> KR <input type="checkbox"/> _____
<input type="checkbox"/> Annexes to 409
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<input type="checkbox"/> Other : _____ | <input type="checkbox"/> PCT/IB/306
<input type="checkbox"/> Request form PCT/RO/101
<input checked="" type="checkbox"/> PCT/ISA/210 - Search Report (check Searching Authority):
<input checked="" type="checkbox"/> EP <input type="checkbox"/> JP <input type="checkbox"/> SE <input type="checkbox"/> AU <input type="checkbox"/> US <input type="checkbox"/> FR <input type="checkbox"/> CN <input type="checkbox"/> ES
<input type="checkbox"/> RU <input type="checkbox"/> AT <input type="checkbox"/> CA <input type="checkbox"/> KR <input type="checkbox"/> _____ <input type="checkbox"/> NONE
<input type="checkbox"/> Search Report References
<input type="checkbox"/> Priority Document (s) No. _____
<input type="checkbox"/> N/A
<input type="checkbox"/> Priority Document was NOT AVAILABLE at the time of paralegal review
<input type="checkbox"/> Other : _____ |
|---|--|

RECEIPTS FROM THE APPLICANT (*filed with the application unless noted otherwise*):

- | | |
|--|---|
| <input checked="" type="checkbox"/> Basic National Fee (<i>or authorization to charge</i>)
<input checked="" type="checkbox"/> Description <input checked="" type="checkbox"/> Claims <input checked="" type="checkbox"/> Abstract
<input checked="" type="checkbox"/> Number of Drawing Sheets : <u>27</u>
<input type="checkbox"/> Translation of Article 19 Amendments
<input type="checkbox"/> entered <input type="checkbox"/> not entered :
<input type="checkbox"/> not a page for page substitution
<input type="checkbox"/> replaced by Article 34 Amendment
<input type="checkbox"/> Annexes to 409
<input type="checkbox"/> entered <input type="checkbox"/> not entered :
<input type="checkbox"/> not a page for page substitution
<input type="checkbox"/> no translation <input type="checkbox"/> other : _____
<input type="checkbox"/> Application Data Sheet
<input type="checkbox"/> Power of Attorney
<input type="checkbox"/> Change of Address
<input type="checkbox"/> PG Pub Early Publication Request | <input type="checkbox"/> Express Request to Begin Nat'l Examination Procedures
<input checked="" type="checkbox"/> Preliminary Amendment(s) Filed on :
1. <input checked="" type="checkbox"/> same as 371 request date 2. _____ 3. _____
<input checked="" type="checkbox"/> Information Disclosure Statement(s) Filed on :
1. <input checked="" type="checkbox"/> same as 371 request date 2. _____ 3. _____
<input type="checkbox"/> Assignee Statement Under 37 CFR 3.73(b)
<input type="checkbox"/> Assignee PG Publication Notice
<input type="checkbox"/> Substitute Specification Filed on :
1. <input type="checkbox"/> same as 371 request date 2. _____ 3. _____
<input type="checkbox"/> Verified Small Status Statement
<input type="checkbox"/> Oath/ Declaration (executed)
<input type="checkbox"/> Defective Oath/ Declaration <input type="checkbox"/> unsigned <input type="checkbox"/> no citizenship <input type="checkbox"/> other
<input type="checkbox"/> DNA Diskette <input type="checkbox"/> Sequence Listing
<input type="checkbox"/> Other : _____
<input type="checkbox"/> Other : _____ |
|--|---|

NOTES :

35 U.S.C. 371 - Receipt of Request (FTO-1390)

4-25-08

Date Acceptable Oath/ Declaration Received

Date of Completion of requirements under 35 U.S.C. 371

Date of Completion of DO/ EO 903 - Notification of Acceptance

Date of Completion of DO/ EO 905 - Notification of Missing Requirements

6-26-09

Date of Completion of DO/ EO 909 - Notification of Abandonment

Date of Completion of DO/ EO 916 - Notification of Defective Response

Date of Completion of DO/ EO 922 - Notification to Comply w/ Requirements for Patent

Applications Containing Nucleotide and/or Amino Acid Sequence Disclosures

Date of Completion of DO/ EO 923